

COMMITTEE OF THE WHOLE


12-0021R

RESOLUTION AUTHORIZING AGREEMENT WITH MADDEN GALANTER
HANSEN, LLP FOR LEGAL SERVICES RELATED TO LABOR
NEGOTIATIONS IN AN AMOUNT NOT TO EXCEED \$45,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. _____, with Madden Galanter Hansen, LLP to provide legal services related to labor negotiations with city's collective bargaining units in an amount not to exceed \$45,000, which shall be payable from Fund 110-700-1407-5304 (General, Transfers and Other Functions, Miscellaneous.)

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

ADM/ATTY GBJ:cjk 12/6/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute an agreement with Madden Galanter Hansen, LLP to provide legal services to the city for labor negotiations with its collective bargaining units, in an amount not to exceed \$45,000. The city has contracted with the Madden firm (previously Frank Madden and Associates) for similar services since 2009, during which the city has negotiated collective bargaining agreements for 2010 and 2011. The city is preparing to negotiate collective bargaining agreements beginning in 2012 with five bargaining units, and is still negotiating with one unit for 2011. The proposed agreement is at a reduced cost as the Madden firm will be providing services limited in scope and on an as needed basis.

AGREEMENT FOR PROFESSIONAL SERVICES

The parties to this Agreement, entered into this _____ day of January, 2012, are the CITY OF DULUTH, MINNESOTA, hereinafter referred to as "City," and MADDEN GALANTER HANSEN, LLP, located at 505 North Highway 169, Suite 295, Plymouth, MN 55441-6444, hereinafter referred to as "Service Provider," for the purpose of rendering legal services to City.

The parties acknowledge the following:

A. City desires to utilize Service Provider's professional services to provide legal services related to labor negotiations with City's collective bargaining units for new labor contracts; and

B. Service Provider has represented that it is qualified and willing to perform services set forth in its proposal;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties agree as follows:

I. Services to be Performed.

Service Provider will provide legal guidance, representation and support related to labor negotiations including interest arbitration with City's collective bargaining units on an as needed basis at the direction of the City Attorney.

II. Fees.

It is agreed between the parties that Service Provider's hourly rate for the term of this Agreement shall be \$125.00 per hour plus mileage and out of pocket expenses and shall not exceed the sum of Forty-Five Thousand Dollars (\$45,000), payable from City Fund 100, Department 700, Division 1407, Object 5304. The Service Provider will not incur additional fees and expenses without prior written authorization from the City. All bills for services rendered shall be submitted monthly to the Duluth City Attorney. Such billings shall be accompanied by documentation as shall reasonably be requested by the City Attorney.

III. General Terms and Conditions.

1. Qualifications. Service Provider represents that it is qualified and willing to perform the services set forth herein.
2. Amendments. Any alterations, variations, modifications or waivers of terms of this Agreement including contract price shall be binding upon City and Service Provider only upon being reduced to writing and signed by a duly authorized representative of each party.
3. Assignment. Service Provider represents that the services to be provided hereunder will be provided by or under the direction of Mr. Frank Madden, that it will utilize only its own personnel in the performance of the services set forth herein, and further that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City Attorney. Further, Service Provider shall not assign any other person as being primarily responsible for the delivery of services hereunder other than Mr. Frank Madden without the prior written consent of the City Attorney.
4. Data and Confidentiality.
 - a. City agrees that it will make available all pertinent information, data and records under its control for Service Provider to use in the performance of this Agreement, or to assist Service Provider wherever possible to obtain such records, data and information.
 - b. All reports, data, information, documentation and material given to or prepared by Service Provider pursuant to this Agreement will be confidential and will not be released by Service Provider without prior authorization from City.
 - c. All notes, reports, records and other data prepared under this Agreement shall become the property of City upon completion or termination of the services of Service Provider. Any reuse of notes, reports, records or other data for anything other than its intended

purpose will be at City's sole risk and without liability or legal exposure to Service Provider.

5. Standard of Performance.

Service Provider agrees that all services to be provided to City pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for the provisions of services of this type.

6. Contract Period.

Service Provider shall commence performance of this Agreement upon the execution thereof and shall continue until terminated by written notice from City to Service Provider. City may terminate this Agreement at any time by providing written notice of termination to Service Provider.

Service Provider is entitled to payment for work satisfactorily performed up to the time of termination.

7. Independent Contractor.

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting Service Provider as an agent, representative or employee of City for any purpose or in any manner whatsoever, except as a legal service provider on the project specified. Service Provider and its employees shall not be considered employees of City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Service Provider's employees while so engaged, and any and all claims whatsoever on behalf of Service Provider's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Service Provider's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay and

PERA. Further, City shall in no way be responsible to defend, indemnify or save harmless Service Provider from liability or judgments arising out of the intentional or negligent acts or omissions of Service Provider or its employees while performing the work specified by this Agreement.

8. Indemnity.

Service Provider agrees that it shall defend, indemnify and save harmless the City and its officers, agents, servants and employees from any and all claims for damages, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of the City or Service Provider, arising out of, or by reason of, any negligent act, omission, operation or work of Service Provider or its employees while engaged in the execution or performance of services under this Agreement. On ten days' written notice from the City, Service Provider will appear and defend all lawsuits against City growing out of such injuries or damages.

9. Liability Insurance.

Service Provider shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars for Leased Premises damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and No/100s (\$1,500,000.00) Dollars per person and be for the same coverages. The City shall be named as an additional insured therein. Insurance shall cover:

- a. Public Liability.
- b. Independent contractors – protective contingent liability
- c. Personal injury

d. Contractual liability covering the indemnity obligations set forth herein.

10. Workers' Compensation.

Service Provider shall procure and maintain continuously in force Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees' liability insurance shall be carried in limits meeting or exceeding the requirements of the State of Minnesota for such insurance.

11. Professional Liability Insurance.

Service Provider shall procure and maintain continuously in force Professional Liability Insurance in an amount not less than \$1,000,000 combined single limit in any year; and if the "Accord Form" of certificate is used, the words "endeavor to" shall be stricken therefrom. Provided further, that in the event that the Professional Malpractice Liability Insurance is in the form of "Claims Made" insurance, sixty (60) days' notice prior to any cancellation or modification shall be required; and in such event, Service Provider agrees to provide City with either evidence of new insurance coverage conforming to the provisions of this Paragraph which will provide unbroken protection to City or, in the alternative, to purchase, at Service Provider's own cost, extended coverage under the old policy for the period the Statute of Repose runs; the protection to be provided by said "Claims Made" insurance shall remain in place until the running of the Statute of Repose for claims related to services provided under this Agreement.

12. Requirements for All Insurance.

All insurance required under this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. City shall be named as an “additional named insured” on each liability policy other than the Professional Liability and Workers’ Compensation policies of the Service Provider.

13. Certifications.

Service Provider is to provide Certificate of Insurance evidencing such coverage within 30 days notice of cancellation, non-renewal, or material change provisions included. City does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant’s interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal, or modification of the policy or coverages evidenced by such certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City. The use of an “Accord” form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL-7002) – or equivalent, as approved by the Duluth City Attorney’s Office. Service Provider shall be permitted to obtain the insurance required under this Professional Services Agreement on a “blanket” basis, and shall be entitled to satisfy any insurance requirements with a combination of primary liability and umbrella coverage.

14. Laws, Rules and Regulations.

Service Provider agrees to observe and comply with all laws, ordinances,

rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement. All proceedings related to this Agreement shall be venued in the State of Minnesota.

15. Applicable Law.

This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

16. Waiver.

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

17. Final Agreement.

This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations either oral or written not herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

FRANK MADDEN & ASSOCIATES

By _____
Mayor

By _____

Attest: _____
City Clerk

Countersigned:

City Auditor

Approved as to form and execution:

City Attorney